

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AVELARDO RIVERA and YASMINE
ROMERO, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

AMAZON WEB SERVICES, INC., a
Delaware corporation,

Defendant.

Case No. 2:22-cv-00269-JHC

**STIPULATED MOTION FOR LEAVE
FOR PLAINTIFFS TO FILE SECOND
AMENDED COMPLAINT**

NOTE ON MOTION CALENDAR:
July 20, 2023

Pursuant to Fed. R. Civ. P. 15(a)(2) and LCR 15, Plaintiffs Avelardo Rivera and Yasmine Romero (“Plaintiffs”) and Defendant Amazon Web Services, Inc. (“Defendant” or “AWS”) (together, the “Parties”), by and through their respective counsel of record, hereby stipulate and agree that Plaintiffs may file a Second Amended Complaint (“SAC”), a redlined version of which is attached hereto as Exhibit 1, and respectfully request that the Court enter an order granting Plaintiffs leave to file their SAC. In support of the instant stipulated motion, the Parties state as follows:

1. WHEREAS, on September 20, 2022, Plaintiffs filed their First Amended Complaint (“FAC”). (Dkt. 44.)

2. WHEREAS, on October 19, 2022, Defendant moved to dismiss the FAC pursuant to Rule 12(b)(6), and the Parties have fully briefed the motion, which is currently pending a ruling. (Dkts. 45, 48, 49.)

3. WHEREAS, on July 17, 2023, the Court held a telephonic hearing and, after the hearing, entered a minute order directing the Parties to submit supplemental briefing regarding whether Plaintiffs have Article III standing to pursue their claims under Section 15(a) of the Biometric Information Privacy Act (“BIPA”). (Dkt. 79.)

4. WHEREAS, Defendant consents to Plaintiffs filing their Second Amended Complaint attached hereto as Exhibit 1, which adds allegations relating to Plaintiffs’ Section 15(a) claims. By consenting to the filing of Plaintiffs’ proposed SAC, Defendant does not admit the truth of any of the allegations in the SAC, including the newly proposed allegations.

5. WHEREAS, should the Court accept the Second Amended Complaint, these new allegations should answer the question as to whether Article III standing exists. Specifically, Plaintiffs allege that AWS failed to comply with the requirements of 15(a) by failing to timely destroy Plaintiffs’ biometric data. (*See* SAC ¶¶ 44, 51, 66.) The Court asked the Parties to address the *Patterson v. Respondus, Inc.* case, in which the *Patterson* court found that Plaintiffs lacked Article III standing because they did not allege “that Respondus failed to comply with a retention-

1 and-destruction policy or that Respondus otherwise retained their biometric data beyond the time
 2 limits set by section 15(a).” *See* 593 F. Supp. 3d 783, 814 (N.D. Ill. 2022), *reconsideration denied*,
 3 No. 20 C 7692, 2022 WL 7100547 (N.D. Ill. Oct. 11, 2022). With the Second Amended Complaint,
 4 Plaintiffs allege those facts. Article III standing accordingly exists under the logic of both
 5 *Patterson* and the Seventh Circuit’s holding in *Fox v. Dakota Integrated Systems, LLC*. *See* 980
 6 F.3d 1146, 1154 (7th Cir. 2020) (finding Article III standing where “[Plaintiff] accuses
 7 [Defendant] of violating the full range of its section 15(a) duties by failing to develop, publicly
 8 disclose, *and comply with* a data-retention schedule and guidelines for the permanent destruction
 9 of biometric data when the initial purpose for collection ends.”) (emphasis in original).

10 6. WHEREAS, the Parties believe that this Stipulated Motion resolves the questions
 11 posed by the Court without burdening the Court with further briefing; however, the Parties are
 12 willing to submit any further briefing as the Court may require, and as quickly as the Court may
 13 require.

14 7. WHEREAS, the Parties further agree that, given the limited amendments in the
 15 SAC, the present briefing on the motion to dismiss remains sufficient, and request that the Court
 16 consider the Parties’ briefing on the motion to dismiss to relate to the SAC, without the need for
 17 Defendants to otherwise respond to the SAC. (Dkts. 45, 48, 49.)

18 **IT IS SO STIPULATED** (*subject to Court Order*).

19 Dated: July 20, 2023

EDELSON PC

20 By: /s/ Alexander G. Tievsky
 21 Alexander G. Tievsky, WSBA #57125

22 By: /s/ J. Eli Wade-Scott
 23 J. Eli Wade-Scott, *pro hac vice*

24 *Attorneys for Plaintiffs*

25 Dated: July 20, 2023

PERKINS COIE LLP

26 By: /s/ Ryan M. Spear

Ryan M. Spear, WSBA #39974

Attorney for Defendant

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ORDER

PURSUANT TO STIPULATION, IT IS HEREBY ORDERED:

1. Plaintiffs are granted leave to file their Second Amended Complaint.
2. Based on the allegations in the SAC, the Court finds that Plaintiffs have Article III standing to pursue in federal court their claims under Section 15(a) of the Illinois Biometric Information Privacy Act, consistent with *Patterson v. Respondus, Inc.*, 593 F. Supp. 3d 783, 814 (N.D. Ill. 2022), *reconsideration denied*, No. 20 C 7692, 2022 WL 7100547 (N.D. Ill. Oct. 11, 2022) and *Fox v. Dakkota Integrated Systems, LLC.*, 980 F.3d 1146, 1154 (7th Cir. 2020).

IT IS SO ORDERED.

DATED this 21st day of July, 2023.

By: 
HON. JOHN H. CHUN
UNITED STATES DISTRICT JUDGE